

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

CASE NO. 04-10006-JGD

<b>MICHAEL RODIO</b>	)
Plaintiff	)
	)
	)
<b>vs.</b>	)
	)
	)
<b>R.J. REYNOLDS TOBACCO COMPANY</b>	)
Defendant	)
	)

PLAINTIFF/RESPONDENT'S STATEMENT  
OF MATERIAL FACTS AS TO WHICH HE CONTENDS  
THERE EXISTS A GENUINE ISSUE TO BE TRIED

Reynolds contends that it terminated the plaintiff for what it calls misuse of company resources. Reynolds own Letter of Termination, however, states that he was being terminated for his failure to (1) maintain Reynolds' cigarette price below that which was allowed by state law, and (2) to place and maintain advertising on counters less than 5 feet off the floor, which was contrary to 940 CMR §21.04 (5)(b). (See Letter

of Termination, Plaintiff's Exhibit D, pages 7 and 8, Fasciani's Affidavit, Defendant's Exhibit B, #41; and Rodio's Affidavit, Plaintiff's Exhibit B).

Respectfully submitted,

By his attorney,



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Dated: October 4, 2005

CERTIFICATE OF SERVICE

I, the undersigned, attorney for the plaintiff hereby certify under the penalties of perjury, that I have this day served the following document on defendant's counsel: Plaintiff /Respondent's Statement of Material Facts as to Which he Contends there Exists a Genuine Issue to be Tried. Said service was made by mailing, postage prepaid, a copy of same to:

Mark H. Burak, Esquire  
Morse, Barnes-Brown & Pendleton, P.C.  
Reservoir Place  
1601 Trapelo Road  
Waltham, MA 02451



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